

AGREEMENT AND DECLARATION OF TRUST

AGREEMENT  
and  
DECLARATION OF TRUST  
of the

ANNUITY FUND OF THE INTERNATIONAL  
UNION OF OPERATING ENGINEERS,  
LOCAL UNIONS 15, 15A, 15C, 15D,  
AFL-CIO

AGREEMENT AND DECLARATION OF TRUST, dated as of July 1, 1977, between the GENERAL CONTRACTORS ASSOCIATION OF NEW YORK, INC. and certain component members of the BUILDING TRADES EMPLOYERS ASSOCIATION, including THE CEMENT LEAGUE, ALLIED BUILDING METAL INDUSTRIES, CONSTRUCTION EQUIPMENT RENTAL ASSOCIATION, MASTER CARPENTERS ASSOCIATION and BUILDING CONTRACTORS ASSOCIATION, together with such other employers who may now or hereafter become parties to the within Plan (hereinafter referred to as "Contributing Employers"); and Local Union 15, 15A, 15C, 15D, International Union of Operating Engineers, (hereinafter referred to as the "Union"); and THOMAS P. MAGUIRE and JAMES V. STAHL, both of 265 West 14th Street, New York, New York 10011 (who with their successors and substitutes, are hereinafter referred to as the "Union Trustees"); and ALFRED GEROSA of 370 Lexington Avenue, New York, New York 10528 and THEODORE KING of 60 East 42nd Street, New York, New York 10017, (who, with their successors and substitutes, are hereinafter referred to as the "Employer Trustees"); and all of the said Union Trustees and Employer Trustees (hereinafter collectively referred to as the "Trustees");

## WITNESSETH:

WHEREAS, Local Union 15, 15A, 15C, 15D, AFL-CIO, International Union of Operating Engineers, AFL-CIO, hereinafter referred to as the "Union" is a Local Union affiliated with the International Union of Operating Engineers, AFL-CIO; and

WHEREAS, the Union has executed collective bargaining agreements with individual employers all of whom employ groups of employees covered within the scope of such collective agreements either association-wide or individually; and

WHEREAS, the said collective bargaining agreements, among other things, provide for the establishment of an Annuity Fund and for the payment by the Employers to the said Annuity Fund periodically of sums of money for those employees who are covered and entitled to the benefits of the said collective bargaining agreements, as more fully set forth in the said agreements, which are herewith incorporated by reference as though fully set forth; and

WHEREAS, the Union and the Employers desire to establish a Trust under which the moneys paid on account of Annuity benefits will be held in a trust fund to be known as the ANNUITY FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 15, 15A, 15C, 15D, AFL-CIO (hereinafter referred to as the "Annuity Fund"), and to disburse said moneys and other properties owned by the Annuity Fund, and to define the powers, duties and responsibilities of the Trustees; and

WHEREAS, it is desired by the Union and the Employers, that the Trustees shall formulate rules, regulations and by-laws comprising the qualifications, eligibility and benefit provisions of the Annuity Plan for the benefit of the employees embraced within the coverage of this agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions herein contained, a Trust is hereby created, and it is mutually declared and agreed as follows:

## ARTICLE I

DEFINITIONS

Section 1. The term "Employer" as used herein shall mean each employer who has presently in force, or who hereafter executes a collective bargaining agreement with the Union either through any of the Associations with whom the Union is in collective bargaining agreement, or individually, and which provides for such employer contributions.

The term "Employer" as used herein shall also mean the Union with respect to its full-time salaried officers, business representatives, full-time paid clerical employees and organizers for whom the Union makes contributions to the Fund on the same basis as other contributing employers.

The term "Employer" shall also mean the Welfare Fund, Pension Fund, Apprenticeship Skill Improvement and Safety Fund and the Annuity Fund of the International Union of Operating Engineers, Local Unions 15, 15A, 15C, 15D, AFL-CIO, with respect to their full-time employees for whom the said Funds make contributions to this Fund on the same basis as other contributing employers.

Section 2. The term "Employee" as used herein shall mean all those employees who are embraced within the scope of the collective bargaining agreements heretofore referred to now or hereafter in effect between the Employers and the Union.

The term "Employee" as used herein shall also mean any full-time salaried officer, business representative, full-time paid clerical employees and organizers for whom the Union makes contributions to the Fund on the same basis as other contributing employers.

The term "Employee" shall also mean any full-time paid clerical employee of the Welfare Fund, Pension Fund, Apprenticeship Skill Improvement and Safety Fund and the Annuity Fund of the International Union of Operating Engineers, Local Unions 15, 15A, 15C, 15D, AFL-CIO, for whom the said Funds make contributions to this Fund on the same basis as other contributing employers.

Section 3. The term "Annuity Fund" or "Annuity Trust" as used herein shall mean all contributions to the Trust Fund created hereunder received by the Trustees under the said collective bargaining agreements and any additional contributions thereto that may hereafter be agreed upon by the parties under the said collective bargaining agreements or other written collective bargaining agreement between the parties, or any modification, amendment, revision or extension thereof, together with all income, increments, earnings and profits therefrom, and all other funds (as herein defined) received by the Trustees for the uses, purposes and trusts set forth in this Trust Agreement. The term "Annuity Fund" shall be interchangeable with the term "Annuity Trust" and with the term "Trust Fund."

Section 4. The term "Fund" or "Funds" as used herein shall mean (1) cash, (2) credits, (3) stocks either common (with or without voting powers) or preferred (with or without present or future voting rights in the event of the happening of a preference condition), (4) bonds, (5) notes, (6) other property or securities or interests in property (real, personal or mixed) whether or not such funds meet the requirements of legal investments for trust funds in any state or jurisdiction, and (7) any life insurance or annuity contract or contracts issued by a life insurance company, held in or forming a part of the Annuity Fund, or any other investments which the Trustees may make not necessarily limited to the foregoing.

Section 5. The term "Trustees" as used herein shall mean the Trustees herein nominated and appointed and any successor Trustees designated in the manner provided herein.



Section 6. The term "Annuity Plan" as used herein means the plan, program, method and procedure for the making of regular contributions by Employers, and the payment by the Trustees of benefits from the Annuity Fund, in accordance with such rules and regulations relating to eligibility requirements, retirement, age, amount and computation of benefits and the general administration and operation of the Annuity Fund as the Trustees may from time to time adopt and promulgate.

Section 7. The term "Contributions" as used herein shall mean the payments required to be made to the Annuity Fund by the Employers.

## ARTICLE II

### NAME

There shall be established a Trust Fund to be known as the ANNUITY FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNIONS 19, 15A, 15C, 15D, AFL-CIO.

## ARTICLE III

### PURPOSES

The purposes of the Trust Fund shall be to provide, pursuant to the Annuity Plan to be formulated and adopted by the Trustees various benefits now or hereafter provided for in the plan or any amendments thereof for the benefit of employees eligible thereto hereunder.

## ARTICLE IV

### APPROVAL OF GOVERNMENTAL AGENCIES

The Annuity Plan shall be submitted for approval under the applicable provisions of the Internal Revenue Code. In the event of failure of Annuity Plan and Agreement and Declaration of Trust to receive or retain approval as a qualified Annuity Plan and Agreement and Declaration of Trust under said provisions of the Internal Revenue Code, or any other applicable provisions of Federal Law as now in effect, or as subsequently amended or legislated, or if such approval, or any ruling in connection therewith shall result in the Employers' contribution constituting taxable income to employees, or the Employers not being entitled to claim a deduction of such contributions for income tax purposes, the

-4-

Trustees shall make such changes as are necessary to receive or retain such approval or authority for Employers to deduct payments to the Annuity Trust without reporting such payments as taxable income to Employees. It is intended, however, that in any event an Annuity Plan shall be established and should any dispute arise among the Trustees because of the said approval or any ruling in connection therewith, or failure to secure such approval, then a deadlock shall be deemed to exist and an umpire shall be designated as provided in Article X, Section 9, to decide such dispute, giving prime consideration to the intent set forth herein.

## ARTICLE V

### CONTRIBUTIONS TO THE ANNUITY FUND

Section 1. Commencing with July 1, 1977 the Employers shall contribute the sum provided for in the Collective Bargaining Agreements for all of the employees within the coverage of the said collective bargaining agreements, with the exception of employers employing members or persons covered under the collective bargaining agreement with Local 15C; contributions for employees covered under collective bargaining agreements with Local 15C shall commence on October 9, 1977 with payment by separate check.

Section 2. The Trustees may compel and enforce the payment of the contributions in any manner which they may deem proper; and the Trustees may make such additional rules and regulations to facilitate and enforce the collection and payment thereof as they may deem appropriate.

Section 3. Employer contributions shall become due on the payroll date and be reported and paid weekly. The failure of the Employer to pay the contributions required hereunder within ten (10) days after the date due shall be a violation of the collective bargaining agreement between the said Employer and the Union as well as a violation of the Employer's obligations hereunder. Non-payment by an Employer of any contributions when due shall not relieve any other Employer from his obligation to make payments.

-5-

Section 4. Each Employer shall promptly furnish to the Trustees on demand any and all wage records relating to his Employees which the Trustees shall require in writing. Each Employer shall also render to the Trustees with the payment of such contributions, or at such other regular intervals as the Trustees may request, written reports as to the wages paid to and hours worked by his Employees, other payroll data such as social security numbers, and the contributions due or payable to the Annuity Fund, as the Trustees may require.

Section 5. The Trustees, or their authorized representatives, may examine the pertinent books and records of each Employer whenever such examination may be deemed necessary or advisable by the Trustees in connection with the proper administration of the Annuity Fund.

## ARTICLE VI

### POWERS AND DUTIES OF THE TRUSTEES, EXPENSES AND FEES

Section 1. The Trustees shall, among other things, without limiting the generality of the express or implied powers of the Trustees:

(a) Accept and receive all contributions and shall hold, invest, reinvest, manage and administer the same as part of the Annuity Fund for the uses, purposes and trusts herein provided.

(b) Accumulate all income, earnings and profits of the Annuity Fund and receive and administer the same as a part thereof.

(c) Formulate, adopt and administer an Annuity Plan for the exclusive benefit of the Employees in order to provide retirement and other benefits for Employees.

(d) Promulgate and establish rules and regulations for the administration and operation of the Annuity Plan in order to effectuate the purposes thereof; and in pursuance thereto (but without limitation on the powers of the Trustees by reason of such enumeration), formulate and establish the conditions of eligibility with respect to age and length of service, qualifications for retirement including early retirement, conditions for vesting prior to normal retirement date, past and future service benefit credits, the method of providing benefits, the payment of premiums in the event that insurance policies or annuity contracts are part of the

-6-

Annuity Plan, the purchase, handling, control and disposition of retirement income contracts, policies and annuities, the investment of funds and any and all other matters which the Trustees in their discretion, may deem necessary or proper to effectuate the purposes and intent of the Annuity Program.

(e) Amend the Annuity Plan from time to time, provided that such amendments comply with the purposes hereof. The Annuity Plan and all amendments thereto adopted by the Trustees shall be filed by the Trustees as part of the records and minutes of the Trustees, and a copy thereof shall be sent to the Union and the Employers.

(f) Establish and accumulate as part of the Annuity Fund such reserve or reserves as the Trustees shall in their opinion deem necessary or advisable for the sound and efficient administration of the Annuity Plan.

(g) Purchase, acquire, receive, retain, surrender, administer or assign any life insurance or annuity contract and pay the premiums, and exercise the rights, privileges, options and benefits contained in any such contract, in the event that the Trustees determine that insurance policies or annuity contracts shall be acquired as part of the Annuity Program.

(h) Receive any securities or other property included within the term "Funds" hereunder that are tendered to them and that they may deem to be acceptable.

(i) Pay out of the Trust Fund all real and personal property taxes of any nature whatsoever; provided, however, that the Trustees may contest the validity of any tax and may obtain the advice of counsel and for all and any acts done or omitted to be done pursuant to the advice of such counsel, the Trustees shall be held completely harmless.

(j) Enter into agreements, contracts and other instruments for the deposit of funds with banks, trust companies or other institutions, which accept and hold moneys on deposit, and to authorize such depository to act as custodian of the funds, whether in cash or securities or other property, and to authorize such depository or depositories to convert, invest and reinvest the funds, entirely or in part, into securities of any kind and nature whatsoever.

-7-



(k) All checks, drafts, vouchers or other withdrawals of funds from the account of the trust fund shall be drawn and issued in accordance with the by-laws hereto annexed, but all withdrawals from the general fund shall require the signature of one (1) Union Trustee and one (1) Employer Trustee. The Trustees shall, in accordance with the by-laws, provide for a special and/or administrative account in the name of the fund for the payment of all routine and ordinary bills and expenses necessary to maintain current operations of the Trust Fund from which they shall be permitted to withdraw on the signature of any two Trustees, any funds necessary to operate the normal needs and requirements of the Annuity Fund. However, the Secretary-Treasurer shall, at least once a month, report to the Trustees all sums deposited in or withdrawn from such special account and the manner and reasons for the disbursements.

(l) In their discretion appoint a bank or a trust company whose principal office is located in the City and County of New York, to be designated as the "Corporate Trustee" or the "Custodial Trustee", and to enter into and execute a trust agreement with such bank or trust company to provide for the investment and reinvestment of the Trust Fund, with such other provisions incorporated therein as may be deemed desirable in the Trustees' sole discretion for the proper management of the Trust Fund and upon such execution to convey and transfer to the Corporate Trustee or Custodial Trustee any

-8-

Section 3. Notices given to the Trustees, the Union, or any Employer hereunder shall, unless otherwise specified be sufficient if in writing and delivered to, or sent by postpaid first class mail or prepaid telegram. Except as herein otherwise provided, distribution or delivery of any statement or document required hereunder to be made to the Trustees, Union or Employers shall be sufficient if delivered in person or if sent by postpaid first class mail.

Section 4. In addition to all other rights, powers and prerogatives vested in them, the Trustees may:

(a) Hold from time to time any or all of the Trust Fund in cash, uninvested and non-productive of interest or other income.

(b) Sell, transfer, or dispose of any securities or other property at any time held by them for cash or on credit; and convert, or exchange any securities or other property at any time held by them for other securities or property which the Trustees may deem acceptable. Any such sale, transfer, disposition, conversion or exchange may be made publicly or by private arrangement.

(c) Consent to the reorganization, consolidation, merger, dissolution, or readjustment of the finances of any corporation, company or association, any of the securities of which may at any time be held hereunder, exercise any option or options, make any agreement or subscription, pay any expenses, assessments or subscriptions in connection therewith and hold and retain any property acquired by means of the exercise of the powers expressed in this paragraph to the extent that it is acceptable to the Trustees.

(d) Compromise, arbitrate, settle, adjust or release any suit or legal proceeding, claim, debt, damage or undertaking due or owing from or to the Trust Fund on such terms and conditions as the Trustees may deem advisable.

(e) Register any securities or other property held in the Annuity Fund with or without the addition of words indicating that such securities or other property are held in a fiduciary capacity; and hold in bearer form any securities or other property held hereunder so that title thereto will pass by delivery, but the books and records of the Trustees shall show that all such investments are part of the Annuity Fund.

-10-

part of the Annuity Fund and without limit with respect to the powers which the Trustees may grant to the Corporate Trustee or Custodial Trustee in such Agreement. The Trustees shall be forever released from any responsibility or liability with respect to any funds which they may convey to the "Corporate Trustee" or "Custodial Trustee".

(m) The Trustees are empowered to allocate fiduciary responsibilities and various administrative duties to committees and sub-committees of the Board of Trustees, and they may delegate such responsibilities and duties to other individuals as they may deem appropriate or necessary in their sole discretion, and consistent with the provisions of the Employees Retirement Income Security Act of 1974.

(n) The Trustees shall have exclusive authority and discretion to manage and control the assets of the Trust except to the extent that such authority to manage, acquire, or dispose of the assets of the plan is delegated to one or more investment managers in accordance with the following paragraph:

The Trustees are hereby empowered to appoint an Investment Manager or Managers to manage, acquire, or dispose of any assets of the Fund. Such an Investment Manager may or may not be designated a "Corporate Trustee" or "Corporate Agent". An Investment Manager is any fiduciary who has been designated by the Trustees to manage, acquire or dispose of any assets of the Fund who is registered as an Investment Advisor under the Investment Advisors Act of 1940 or an insurance company qualified to perform services under the laws of more than one state, and who has acknowledged in writing that he is a fiduciary with respect to the Plan.

Section 2. The Trustees shall have and maintain an office in the City and County of New York, which shall be deemed the situs of the Annuity Fund. The Trustees may from time to time change the location of said office within the City and County of New York, but no change shall be effective until notice thereof shall have been given to the Union and the Employers.

-9-

(f) Lease or purchase such premises, materials, supplies and equipment, and employ and retain such legal counsel, investment counsel, administrative, accounting, actuarial, clerical, custodian and other assistants or employees as in their discretion the Trustees may deem necessary or appropriate and to pay their reasonable expenses and compensation out of the Trust Fund.

(g) Vote in person or by proxy or otherwise upon securities held by the Trustees and to exercise by attorney or in any other manner any other rights of whatsoever nature pertaining to securities or any other property at any time held by them hereunder.

(h) Make, execute and deliver as Trustees any and all instruments in writing necessary or proper for the effective exercise of any of the Trustees' powers as stated herein, or otherwise necessary to accomplish the purposes of the Annuity Fund and this Trust Agreement.

(i) Borrow money from any and all types of persons, companies or institutions upon such terms and conditions as the Trustees may deem desirable and for the sums so borrowed or advanced, the Trustees may issue promissory notes or other evidence of indebtedness as Trustees, and secure the repayment thereof by the pledge of any securities or other property in their possession as Trustees.

(j) Apply to the United States District Court for the Southern District with respect to the disposition of any disputes which may arise among the Trustees and be unresolved among them or with respect to the disposition of the Annuity Fund if there shall be a dispute and no resolution concerning the same; or submit by mutual agreement to impartial arbitration for an award and determination any of the foregoing disputes if they be unresolved; but nothing herein contained shall be construed as imposing any duty on the Trustees to make such application, or as a limitation of any kind or nature upon the powers, rights and prerogatives of the Trustees.

(k) Authorize by resolution any one or more of the Trustees to execute any notice or other instrument in writing and all persons, partnerships, corporations or associations may rely thereupon that such notice or instrument has been duly authorized and is binding on the Annuity Trust and the Trustees.

-11-

(1) Provide, under this Agreement and Declaration of Trust and under any plan thereafter promulgated, for employees or officials connected with and/or members of the Union for whom the Union will make contributions, subject at all times to the irrevocable discretion of the Trustees as to coverage, amount of contributions and any and all other things or matters pertaining thereto.

(m) Do all other acts, and take any and all other action, whether or not expressly authorized herein, which the Trustees may deem necessary or proper for the protection of the property held hereunder.

Section 5. The expenses incurred in the collection of contributions and in the administration and operation of the Annuity Fund shall be paid from the Annuity Fund. No Trustee shall receive any compensation for the services rendered by him.

#### ARTICLE VII

##### ACCOUNTS, RECORDS AND AUDITING THEREOF

Section 1. All income, profits, recoveries, contributions, forfeitures and any and all moneys, securities and properties of any kind at any time received or held by the Trustees hereunder shall be held for the uses and purposes hereof.

Section 2. The Trustees shall keep true and accurate books of accounts and records of all their transactions, which shall be open to the inspection of each of the Trustees at all times, and which shall be audited semi-annually by a certified public accountant selected by the Trustees. A condensed statement of such audits shall be available at all times for inspection by the Union, the Employers and Employees at the principal office of the Annuity Fund.

Section 3. The Annuity Fund shall be valued by the Trustees annually at the market value as of the close of business at the end of the last business day preceding the anniversary date of the Annuity Plan, but the value of any life insurance or annuity contracts shall not be included in such valuation; and in making such valuation, the Trustees may engage the help, and pay the expenses of, such persons as they may select.

-12-

Section 3. TRUSTEES' INSURANCE. The Trustees may authorize the purchase of insurance for themselves collectively and/or individually and for any other fiduciary employed by the Trustees to cover liability or losses occurring by reason of the act or omission of a fiduciary.

Section 4. The Trustees shall be fully protected in acting upon any instrument, certificate, or paper believed by them to be genuine and to be signed or presented by the proper person or persons, and shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing, but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained.

Section 5. The Trustees shall not be liable for the proper application of any part of the Annuity Fund or for any other liabilities arising in connection with the administration or operation of the Trust Fund, except as herein provided.

Section 6. The Trustees may from time to time consult with the Trust's legal counsel and shall be fully protected in acting and relying upon advice of such counsel.

Section 7. The Trustees may seek judicial protection by any action or proceeding they may deem necessary to settle their accounts, or to obtain a judicial determination or declaratory judgment as to any question of construction of the Trust Agreement or instruction as to any question of construction of the Trust Agreement or instruction as to any action thereunder.

Section 8. The costs and expenses of any action, suit, or proceeding brought by or against the Trustees or any of them (including counsel fees) shall be paid from the Trust Fund, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Trustee was acting in bad faith or was grossly negligent in the performance of his duties hereunder.

Section 9. The Trustees shall not be bound by any notice, direction, requisition, advice or request, unless and until it shall have been received by the Trustees at the principal place of business of the Annuity Fund.

-14-

#### ARTICLE VIII

##### CLAIMS AND INDIVIDUAL RIGHTS

Section 1. No employee or any person claiming by or through such employee by reason of having been named a beneficiary in a certificate or otherwise, shall have any rights, title or interest in or to the funds or other property of the Annuity Fund or any part thereof, except as specifically provided by the Annuity Plan and the applicable rules and regulations thereunder.

Section 2. No moneys, property or equity of any nature whatsoever in the Trust or Trust Fund or policies or benefits or moneys payable therefrom shall be subject in any manner, by any Employee or person claiming through such Employee, to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, garnishment, mortgage, lien or charge, and any attempt to cause the same to be subject thereto shall be null and void.

#### ARTICLE IX

##### INDEMNIFICATION AND PROTECTION OF TRUSTEES AND OTHER PERSONS

Section 1. No successor Trustee shall in any way be liable or responsible for anything done or committed in the administration of the Trust prior to the date they became a Trustee. The Trustees shall not be liable for the acts or omissions of any investment manager, attorney, agent or assistant employed by them in pursuance of this agreement, if such investment manager, attorney, agent or assistant was selected pursuant to this Trust Agreement and such persons performance was periodically reviewed by the Trustees who found such performance to be satisfactory; provided that nothing herein shall relieve any Corporate Trustee of any liability with regard to the performance of its employees.

Section 2. The Trustees, to the extent permitted by applicable law, shall incur no liability in acting upon any instrument, application, notice, request, signed letter, telegram or other paper or document believed by them to be genuine and to contain a true statement of facts, and to be signed by the proper person.

-13-

Section 10. No person, partnership, corporation or association dealing with the Trustees shall be obliged to see to the application of any funds, securities or other property paid or delivered to the Trustees as a purchase price or otherwise or to see that the terms of the Trust have been complied with or be obliged to inquire into the authority of the Trustees or the necessity or expediency of any act of the Trustees and every instrument effected by the Trustees shall be conclusive in favor of any person, partnership, corporation or association relying thereon that (1) at the time of the delivery of said instrument, the Trust was in full force and effect; (2) said instrument was effected in accordance with the terms and conditions of this Trust Agreement; and (3) the Trustees were duly authorized and empowered to execute such instrument.

#### ARTICLE X

##### APPOINTMENT, REMOVAL RESIGNATION AND ADMINISTRATIVE FUNCTIONS OF TRUSTEES

Section 1. The Trustees shall consist of four persons, two persons named by the Union and two persons named by the Employers. The Union Trustees shall be Thomas P. Maguire and James V. Stahl. The Employer Trustees named by the individual Employers are Alfred Gaross and Theodore King.

The above named Trustees, each for himself, accept their appointment as Trustees and consent to act as Trustees hereunder, and declare and agree that they will receive the terms, conditions and provisions of this Trust Agreement and for the uses, purposes and trusts and with the powers and duties herein set forth and none other.

Section 2. The Trust to be set up by the parties herein shall be known as Annuity Fund of the International Union of Operating Engineers, Local Unions 15, 15A, 15C, 15D, AFL-CIO, and the Trustees may conduct the business of the Trust and execute all instruments in that name. The Chairman of the Board of Trustees shall be selected from the Employer-Trustees of the Board and the Secretary-Treasurer shall be selected from the Union Trustees of the Board.

-15-



Section 3. Each Trustee shall serve until his death, resignation or removal or substitution.

Section 4. A Trustee may resign on giving thirty (30) days' notice in writing to the remaining Trustees.

Section 5. Any Union Trustee may be removed from office at any time by the Union, such removal to be evidenced by an instrument in writing signed by the accredited officers of the Union and delivered to all the Trustees. Any Employer Trustee may be removed from office at any time by the Association or Associations that designated him, such removal to be evidenced by an instrument in writing signed by the accredited officers of such Association or Associations and delivered to all of the Trustees.

Section 6. In case any Trustee who is an Employee representative shall die, resign or be removed, a successor Trustee shall be appointed forthwith by the Union, such appointment to be evidenced by an instrument in writing signed by the accredited officers of the Union. In case any Trustee who is an Employer representative shall die, resign or be removed, a successor Trustee shall be appointed forthwith by the Employers, such appointment to be evidenced by an instrument in writing, signed by the accredited officers of such Employers.

Section 7. A meeting may be called at any time by the Chairman or by any two of the Trustees upon giving five (5) days written notice to all the other Trustees.

Section 8. Any action by the Trustees may be taken either at a meeting or in writing signed by all of the Trustees without a meeting. Concurrence of the respective majorities of each unit of the Union and Employer Trustees shall be required for any action taken at the meeting. All decisions and/or resolutions of the Trustees shall as aforementioned be by respective majority votes of both Union and Employer Trustee units, and which voting shall be on a unit basis of the respective Union-Employer Trustees groups. All action taken by the Trustees shall be by a quorum of no less than three (3) Trustees.

Concurrence in writing signed by the requisite number of Trustees as aforementioned shall be required for any decisions or other action taken or adopted without a formal meeting.

-16-

#### ARTICLE XIV

##### AMENDMENTS

The provisions of this Agreement and Declaration of Trust may be amended by an instrument in writing executed by the Trustees provided there are attached thereto a duly certified copy of a resolution approving such amendment adopted by the general organization of the Union at a regular meeting or at a special meeting called for that purpose, and duly certified copies of resolutions duly approving such amendment, it being expressly understood and agreed that no amendment shall divert any of the Trust Estate then in the hands of the Trustees from the purposes of this Trust.

#### ARTICLE XV

##### SAVING CLAUSE

If, for any reason, any provision of this Agreement shall be, is or is hereafter determined by decision, act or regulation of a duly constituted body or authority, to be in any respect invalid, it shall not nullify any of the other terms and provisions of this Agreement, and in such respect or respects as may be necessary to conform this Agreement with the applicable provisions of law in order to prevent the invalidity of such provision or provisions, then the said provision or provisions shall be deemed automatically amended to conform with such rule, law, regulation, act or decision and the parties to this Agreement, shall, in such case, meet and take the necessary and appropriate action, at a duly constituted meeting, to formally adopt and ratify such amendment or amendments to this Agreement and they shall be deemed included herein as though originally contained in and a part of this Agreement from its inception.

IN WITNESS WHEREOF, the Trustees, the Associations and Local Unions 15, 15A, 15C, 15D of the International Union of Operating Engineers, by their proper officers who represented that they were duly authorized to act have executed this instrument to evidence their acceptance of the Trusts hereby created and their agreements to be bound hereby, the day and year first above written.

-18-

Section 9. In the event of a deadlock among the Trustees or any of the affairs of this Trust, an impartial umpire to decide the matter in dispute shall be appointed by consent of all of the Trustees, and if the Trustees have not selected an impartial umpire who has signified his acceptance, within ten (10) days after the deadlock arose, any one or more of the Trustees may petition the United States District Court for the Southern District of New York for the appointment of an impartial umpire to decide such dispute, or for the Court to do so.

#### ARTICLE XI

##### TERMINATION OF THE TRUST

In the event that the obligation of the Employers to make Employer contributions shall terminate, or upon any liquidation of the Trust Estate, the Trustees shall continue to apply the Trust Estate to the purposes specified in Article III hereof and none other, and upon the disbursement of the entire Trust Estate this Trust shall terminate.

#### ARTICLE XII

##### BONDING

The Trustees and the employees of the Annuity Fund shall each be bonded by a duly authorized surety company in such amounts as may be determined from time to time by the Trustees.

#### ARTICLE XIII

##### EXECUTION AND INTERPRETATION

Section 1. This Agreement and Declaration of Trust may be executed in one or more counterparts. The signature of a party on any counterparts shall be sufficient evidence of his execution hereof.

Section 2. The provisions of this Trust Agreement shall be liberally construed in order to promote and effectuate the establishment and operation of the Annuity Program herein contemplated. The Trustees shall have power to interpret, apply and construe the provisions of this Trust Agreement, and any construction, interpretation and application adopted by the Trustees in good faith shall be binding upon the Union, the Employers and the Employees.

#### UNION TRUSTEES

Thomas F. Maguire  
THOMAS F. MAGUIRE  
James V. Stahl  
JAMES V. STAHL

#### EMPLOYER TRUSTEES

Alfred D'Amico  
ALFRED D'AMICO  
Theodore King  
THEODORE KING

#### GENERAL CONTRACTORS ASSOCIATION OF NEW YORK, INC.

BY William C. J.

#### BUILDING TRADES EMPLOYERS ASSOCIATION

BY Robert J. Kane

#### THE CEMENT LEAGUE

BY George J. Brown

#### ALLIED BUILDING METAL INDUSTRIES

BY Robert J. Kane

#### CONSTRUCTION EQUIPMENT RENTAL ASSOCIATION

BY Robert J. Kane

#### MASTER CARPENTERS ASSOCIATION

BY Robert J. Kane

#### BUILDING CONTRACTORS ASSOCIATION

BY Robert J. Kane

-19-